

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

WILEY TOLER,

Plaintiff,

vs.

JEFFERY TROUTT, DO, et al.,

Defendant(s).

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Case No. CIV-13-1025-F

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing pro se, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Stephen P. Friot, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Plaintiff has sufficient funds to prepay the filing fee of \$400.00. Specifically, the record reflects that Plaintiff has \$544.92 in his inmate savings account which is available for the payment of filing fees. Because Plaintiff does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion, **ECF No. 2**, be **DENIED** and that he be ordered to prepay the full \$400.00 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). *Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should issue a report and recommendation when denying motion to proceed *in forma pauperis*.).

It is further recommended that this action be dismissed without prejudice to re-filing unless Plaintiff pays the \$400.00 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Plaintiff is advised of his right to file an objection to this Report and Recommendation with the Clerk of Court by **October 15, 2013**, in accordance with 28 U.S.C. § 636 and Fed.R.Civ.P. 72. Plaintiff is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

The Clerk is not to forward a copy of the petition to the appropriate state agency until further order of the Court. **This report and recommendation terminates the referral to the undersigned Magistrate Judge unless and until the matter is re-referred.**

ENTERED on September 24, 2013.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE